TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 510.

WILLIAM F. DAVIDSON, PLAINTIFF IN ERROR,

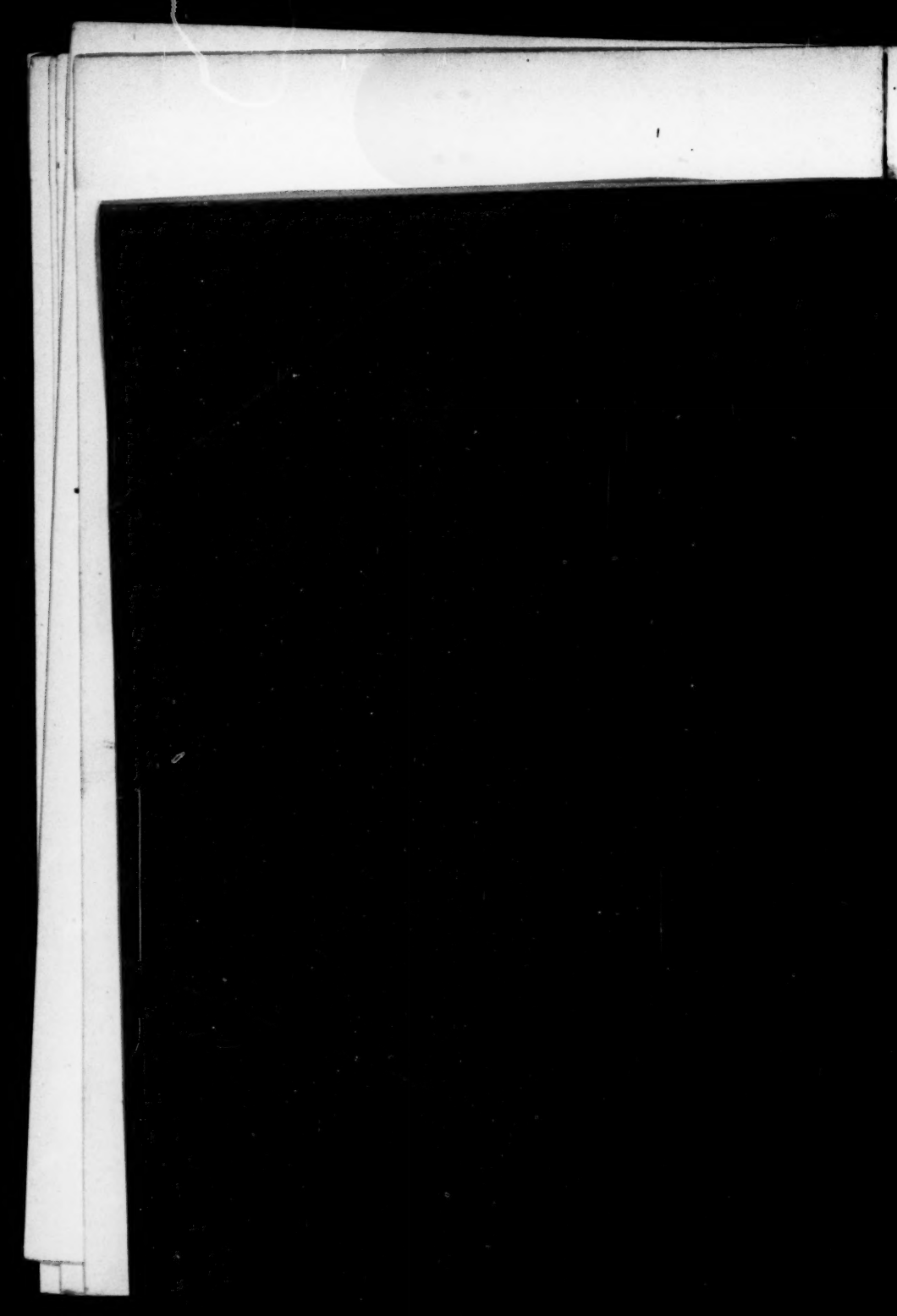
vs.

ARTHUR CONNELLY.

2 Wall 458

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED DECEMBER 9, 1871.



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1 Supreme court State of Minnesota.

ARTHUR CONNELLY, RESP.,
vs.
W'M F. DAVIDSON, IMPLEADED WITH HARVEY T. Rumsey, app'l't.

To the Honorable C. G. Ripley, chief justice of the aforesaid court:

The petition of William F. Davidson, above named, respectfully states that, in the judgment and decision of said cause, by said supreme court of Minnesota, there was drawn in question the construction of certain statutes of the United States, and certain provisions of the Constitution of the United States, and the decision was against the rights, privileges, and exemptions claimed by your petitioner under the same.

Your petitioner, therefore, prays your honor to examine the record in said suit herewith presented to you, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of the State of Minnesota, pursuant to the act of Congress in such case made and provided.

ALLIS, GILFILLAN & WILLIAMS,
Att'ys for William F. Davidson, Petitioner.

2 (Endorsed:) Petition for writ of error. January 19, 1871. Writ of error allowed as within prayed for. C. W. Ripley, chief justice of supreme court. Filed January 19, 1871. Sherwood Hough, clerk."

3 THE UNITED STATES OF AMERICA:

The President of the United States to the judges of the supreme court of the State of Minnesota, greeting:

Because that, in the record and process, and also on the rendering of judgment in a suit before you, between Arthur Connelly, respondent, and William F. Davidson, impleaded with Harvey T. Rumsey, appellant, in a civil action, a manifest error has intervened to the great damage of said appellant, William F. Davidson, as in his complaint has been stated, and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in 'his behalf, your are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that, the
4 record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this nineteenth day of January, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States the ninety-fifth.

[SEAL.]

H. E. MANN,
Clerk U. S. Circuit Court for the District of Minnesota.

5 STATE OF MINNESOTA, *Supreme Court, ss:*

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

Answer of the justices of the supreme court of the State of Minnesota, as commanded in the within writ.

Dated St. Paul, Minnesota, this 8th day of May, A. D. 1871.

[SEAL.] SHERWOOD HOUGH,
Clerk Supreme Court, Minnesota.

(Endorsed:) "Supreme Court U. S. W'm F. Davidson, pl'ff in error, vs. Arthur Connelly, def't in error. Writ of error. Filed January 19th, 1871. Sherwood Hough, clerk sup. ct. Minnesota. Allis, Gilfillan & Williams, att'ys for pl'ff in error."

6 (Endorsed:) 1049. Supreme Court U. S. William F. Davidson, pl'ff in error, vs. Arthur Connelly, def't in error. Writ of error. Filed January 19, 1871. Sherwood Hough, clerk sup. c't Minnesota. Allis, Gilfillan & Williams, att'ys for pl'ff in error.

7 UNITED STATES OF AMERICA, *ss:*

To ARTHUR CONNELLY, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein William F. Davidson, impleaded with Harvey T. Rumsey, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. G. Ripley, chief justice of the said supreme court of the State of Minnesota, this 19th day of January, A. D. 1871.

C. G. RIPLEY,
Ch. Justice Supreme C't Minnesota.

(Endorsed:) Due service of the within citation, by copy, is admitted. Jan'y , 1871.

SMITH & GILMAN,
Att'ys for Pl'ff.

Filed May 3rd, 1871.

SHERWOOD HOUGH, *Clerk.*

8 Supreme Court of the United States.

WILLIAM F. DAVIDSON, IMPLEADED WITH Harvey T. Rumsey, pl'ff in error,
vs.
ARTHUR CONNELLY, DEF'T IN ERROR.

Know all men by these presents that we, William F. Davidson, Charles T. Miller, and J. C. Burbank, of Saint Paul, in the State of Minnesota, are held and firmly bound unto the above-named Arthur Connelly in the sum of five thousand dollars, to be paid to the said Arthur Connelly, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, execu-

tors, and administrators, jointly and severally, firmly by the' presents, sealed with our seals, dated this nineteenth day of January, A. D. 1871.

The condition of the above obligation is such, that whereas the above-named William F. Davidson hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Minnesota:

Now, therefore, if the above-named William F. Davidson shall
9 prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W'M F. DAVIDSON, [SEAL.]
By LORENZO ALLIS, [SEAL.]
His Att'y-in-Fact.
CHA'S T. MILLER. [SEAL.]
JA'S C. BURBANK. [SEAL.]

Sealed and delivered in presence of—
H. L. WILLIAMS.
C. M. MCCARTHY.

STATE OF MINNESOTA,
Ramsey County, ss:

On this 19th day of January, A. D. 1871, before me, personally came Charles T. Miller, J. C. Burbank, and Lorenzo Allis, to me known to be the same person' described in and who executed the foregoing instrument, and acknowledged that they executed the same for the uses and purposes therein expressed; and the said Allis acknowledged that he executed the same as and for the act of his said principal.

[SEAL.] C. M. MCCARTHY,
Notary Public Ramsey Co., Minn.

STATE OF MINNESOTA,
Ramsey County, ss:

Charles T. Miller & J. C. Burbank, being duly sworn, doth, each for himself, say that he is a resident and freeholder of said State, and
10 is worth the sum of five thousand dollars above his debts and liabilities, and exclusive of his property exempt from execution.

CHA'S T. MILLER.
JA'S C. BURBANK.

Sworn to and subscribed before me this 19th day of January, A. D. 1871.

[SEAL.] C. M. MCCARTHY.
Notary Public, Ramsey Co., Min.

I hereby approve the foregoing bond.

C. G. RIPLEY,
Ch. Justice Sup. Court, Min.

(Endorsed:) "Filed January 19th, 1871. Sherwood Hough, clerk."

11 District court, first district.

STATE OF MINNESOTA, *Dakota County:*

ARTHUR CONNELLY, RESPONDENT,
vs.
WILLIAM F. DAVIDSON, IMPLEADED WITH HARVEY T. RUMSEY, appellant.

The complaint of the plaintiff, of said county, alleges that, on the first day of November, 1864, and during all the time hereinafter named, said defendants were engaged in the business of transporting freights and passengers in and upon the Mississippi River, in said State, and elsewhere, and were so engaged up to and including the 4th day of November, in the year aforesaid.

That said defendants had and used during the time aforesaid, in said business, for their mutual benefit and profit, a certain steamboat called the "John Rumsey."

That, during all the time aforesaid, this plaintiff was employed as a deck-hand and laborer upon a certain other steamboat, called the "Albany," then navigating said river; and the plaintiff avers that, on said 4th day of November, 1864, both of said boats were passing
12 up said river, bound for the port of St. Paul, in Ramsey County, the plaintiff then still being upon said boat Albany.

That, on the day and at the time last aforesaid, said steamer John Rumsey, so being used and navigated by defendants in their business aforesaid, and then and during all the time hereinafter named, under the exclusive control and management of said defendants, their servants and agents.

And plaintiff avers that said defendants then had in their employment upon said boat John Rumsey, as one of the engineers, to manage and control the engines furnishing the motive power to said boat, one W'm Dunnigan, who then had not, as defendants then well knew, any license or authority under the laws of the United States, or any competent authority, to act as such engineer.

That said Dunnigan was then unskilled, and unqualified to properly manage said engines, and perform the duties of engineer, as defendants well knew.

And plaintiff avers that it did not become necessary by reason of the discharge of any engineer during the trip said boat was then making, to employ said Dunnigan, but that said defendants employed said Dunnigan as such engineer prior to the time of the commencement
13 of said trip and voyage.

That, on said 4th of November, 1864, whilst said boat John Rumsey was so employed in said business for defendants, and managed and exclusively controlled by them as aforesaid, the defendants, without the knowledge, consent, or act of this plaintiff, near Pig's Eye Bar, so-called, between Hastings and St. Paul, suffered and wrongfully permitted said engines of said boat to be placed in charge of and under the control of said Dunnigan, and permitted the only competent licensed engineer upon said boat John Rumsey, to leave said engines in charge of said Dunnigan, and go elsewhere.

That said defendants, by their captain in charge of said boat, did wrongfully direct said Dunnigan to shut off the supply of water from the boilers of said boat, and increase the steam therein; and said defendants, by said Dunnigan, did then and there wrongfully and inju-

riously suffer the water in the boiler of the said boat to fall and be below the upper gauge-cock, and then wrongfully neglected to keep the usual and necessary and proper supply of water in said boiler, and did then and there cause and permit the steam in said boiler to raise, and the weight thereof to be increased to an undue and unsafe extent,
14 and over and above one hundred and forty pounds to the inch, which amount of one hundred and forty pounds to the inch was the greatest amount said boat was then licensed to carry, as defendants then well knew.

And thereupon said defendants caused said steam in said boilers to rise, and so continue, so as to endanger said boat and the boats near to said boat John Rumsey.

That said boat "Albany," upon which this plaintiff then lawfully was, during the time aforesaid, and the time hereinafter named, was also passing up said river, a short distance in advance of and near to said boat John Rumsey, and whilst said engines were so in charge of said Dunnigan, and said undue pressure of steam kept up, said defendants caused said boat Rumsey to pass near to said boat Albany, and did thereupon without the act or consent of this plaintiff, cause said boat John Rumsey to strive and race with said boat Albany, with intent to beat said boat Albany to the wharf-boat at St. Paul, and in so doing, and otherwise wrongfully, and regardless of the safety of this plaintiff and others upon said boats, increased and continued said undue pressure of steam, to cause the water to be shut off, as aforesaid, from said boiler, and place upon the safety-valve connected with said boiler of said boat John
15 Rumsey, a heavy weight, and thereby endangered said boat, and wrongfully and recklessly continued said race, and increased the speed of said boat, and continued said pressure until at or near West St. Paul, in said Dakota County, and below St. Paul, in said river, and whilst said boat John Rumsey, was so as aforesaid run close to said boat Albany, the said boiler of said boat John Rumsey, by reason of the great pressure and wrongful acts aforesaid, the boiler of said boat John Rumsey exploded, and with great force and violence blew up over to and against the said boat Albany, upon which this plaintiff then lawfully was, and by force of said explosion, without the fault of plaintiff, threw portions of said boiler, pieces of wood, and fragments of said boat John Rumsey upon and against plaintiff, by means of which plaintiff was then and there brusied, wounded, and his life endangered, one of his arms broken, cut in his face, and bruised in and upon his person otherwise, so as to disable the plaintiff, and make him sick, lame, and diseased, and wholly unfit for and unable to attend to business, or perform labor as he otherwise could do, by means of which plaintiff has been kept from home and away from his family, and has suffered great pain of body and anxiety of mind, and has been and is damaged
16 in the premises to the amount of five thousand dollars.

Wherefore plaintiff demands judgment for said sum of $5,000 and costs.

SMITH & GILMAN,
Attorneys for Plaintiff.

STATE OF MINNESOTA, *County of Ramsey, ss:*

James Smith, jr., being sworn, says that he is one of the attorneys of plaintiff in the action above entitled, and that the foregoing complaints therein *is* true, of his own knowledge, except as to *means* therein stated upon information or belief, and as to those matters, that he believes it to be true; that the means of deponent's knowledge and grounds of his

belief, are communications from said plaintiff, and others, who were upon said boat at the time of said explosion, which he believes to be true, and also facts within his own knowledge; that the reason why deponent verifies this pleading is, that said plaintiff is not a resident of or within the county where said attorneys reside, to verify the same, as deponent verily believes.

JAMES SMITH, JR.

Sworn to and subscribed before me, this 27th day of April, A. D. 1866.

J. J. EGAN,
Notary Public Ramsey Co., Minn.

17 District court, first judicial district, county of Dakota.

ARTHUR CONNELLY
against
W'M F. DAVIDSON AND HARVEY T. RUMSEY.

And now comes William F. Davidson, one of the defendants in this action, and for his separate answer to the plaintiff's complaint, denies each and every allegation in said complaint contained, except in so far as the same shall be hereinafter expressly admitted.

And this defendant admits that he was engaged in transporting passengers and freight for his own individual account upon the Mississippi River, in the State of Minnesota and elsewhere, during all the time mentioned in said complaint. And he admits, upon information and belief, that said defendant, Harvey T. Rumsey, was also, during all said time, engaged in transporting passengers and freight for his (said Rumsey's) own individual account upon the Mississippi River, in said State, and elsewhere.

But this defendant specifically denies that said defendants were, at or during any of the time or times in said complaint mentioned, en-
18 gaged in transporting passengers or freight on the Mississippi River, in said State or elsewhere, on or for their joint account or concern.

And this defendant, upon information and belief, further admits that said steamboats, on the said 4th day of November, A. D. 1864, at the time mentioned in said complaint, were passing up said Mississippi River, bound for the said port of St. Paul; but as to whether or not the said plaintiff was at the time employed upon said steamboat Albany as a deck-hand and laborer, or otherwise, or was upon said steamboat, this defendant has no knowledge or information thereof sufficient to form a belief.

And, further answering, this defendant specifically denies that said plaintiff has been damaged in the sum of five thousand dollars, or in any sum or amount whatever, as said plaintiff in his said complaint hath in that behalf stated. Wherefore said defendant demands to be hence dismissed, with his costs and disbursements.

ALLIS & WILLIAMS,
Attorneys for Defendant Davidson.

STATE OF MINNESOTA,
County of Ramsey, ss:

William F. Davidson, being duly sworn, says:

That he is one of the defendants named in the foregoing answer,

and that the said answer is true of his own knowledge, except
19 as to matters which are herein stated on his information or belief; and, as to those matters, that he believes it to be true.

W'M F. DAVIDSON.

Sworn and subscribed before me this 31st day of May, 1866.

[L. S.] MACK J. LEAMING,
Notary Public Ramsey County, Minn.

District court, second judicial district.

STATE OF MINNESOTA, *County of Ramsey:*

ARTHUR CONNELLY
vs.
W'M F. DAVIDSON & HARVEY T. RUMSEY.

Bill of exceptions.

This case, being at issue as to the defendant William F. Davidson, was, by stipulation of parties, transferred from Dakota to Ramsey County, and, on the 26th day of May, 1868, came on for trial at the general term of the court, held the first Tuesday in May, 1868—his honor the judge of the court presiding.

20 The cause being called, a jury was empannelled and sworn to try the same; and the plaintiff, to prove the issues on his part, was sworn as a witness on his own behalf, and testified to the explosion, mentioned in the complaint, of the steamer John Rumsey; that, at the time of such explosion, he (the plaintiff) was employed as a deck-hand or roustabout on board the steamboat "Albany;" also to the injuries sustained by him from the explosion, and to facts tending to show negligence on the part of those engaged in navigating the "John Rumsey."

And further to maintain the issue on his part, the plaintiff introduced evidence tending to show that the explosion of the "John Rumsey" was the result of negligence or misconduct on the part of those engaging in navigating the "John Rumsey," and also that the second engineer of said steamer, and who, at the time of the explosion, was in charge of her engine, was not a licensed engineer, under the laws of the United States.

And, further to maintain the issues on his part, the plaintiff introduced and read to the jury the deposition of Harvey T. Rumsey, who testified that, at the time of the explosion, the steamer "John Rumsey" was owned by him (the witness) and the defendant Davidson; that Davidson's interest was one-half interest in the boat and one-half of her
21 earnings; that the other half of the boat and earnings were owned by the witness; that both had the management of the boat; and that they accounted together for the earnings in March, 1865.

And, further to maintain the issues on his part, the plaintiff introduced other evidence, tending to show that the defendant Davidson was interested in the earnings of said boat "John Rumsey," and that he and Harvey T. Rumsey managed her together during the season of 1864.

And the plaintiff thereupon rested his case.

And, to maintain the issues on his part, the defendant Davidson introduced evidence tending to show that, at the time of said explosion, said steamer "John Rumsey," was properly enrolled under the laws of the United States; that her boiler was duly inspected, and a certificate

of inspection issued by the proper inspector, under the laws of the United States, in September 1864; that her second engineer was a competent and skillful engineer, and that the explosion was not owing to any defect in the machinery of said steamer, nor to any negligence or want of due care and skill on the part of those engaged in navigating her at the time of the explosion.

And, further to maintain the issue on his part, the defendant Davidson introduced a number of witnesses, whose testimony tended to show that, during the season of 1864, and at the time of the
22 explosion, the steamer "John Rumsey" was wholly owned by and under the exclusive management and control of Harvey T. Rumsey; that said Rumsey employed the persons engaged in navigating her, and that said Davidson had not control or management of her or those engaged in navigating her.

And, further to maintain the issues on his part, the defendant Davidson was sworn as a witness in his own behalf, and testified that, at the time of said explosion, he did not own any interest in said steamer "John Rumsey," and was not interested in her in any way, and did not have nor exercise any control over or management of her, or those engaged in navigating her, and did not employ them; and that said steamer was exclusively owned and controlled by Harvey T. Rumsey. He further testified that, sometime in the summer of 1864, said Harvey T. Rumsey owning two steamboats, one of them the "John Rumsey," and the defendant Davidson several steamboats, one of them the "Chippewa Falls," and one the said steamboat "Albany," the latter owned by defendant Davidson and his brother, and, each of them being employed in running his own boats, in conveying passengers and freight on the Mississippi River, it was agreed between them that, at the
23 end of the season of navigation for that year, they should divide in certain proportions, agreed on, the earnings of said boats between them, including the earnings of said boats "John Rumsey" and "Albany," the earnings of the said "John Rumsey" and "Chippewa Falls" to be equally divided; and that, at the end of such season, each should render an account of the earnings of his boats during such season to the other, and then the balance, according to the propositions agreed on, should be paid over; that each should have the exclusive control and management of his own boats and business, without any right on the part of the other to interfere with the same in any way, it being expressly understood that there should be no mixing of management, but that each should run his own boats as he pleased and where he pleased.

The defendant Davidson thereupon rested his case.

And the plaintiff, by his counsel, thereupon requested his honor the judge, to charge the jury that: "If the boiler of the John Rumsey exploded through the fault of the officers of the boat, as alleged in the complaint, and injured the plaintiff without his fault, and the defendants, Davidson and Rumsey, were at the time jointly interested in the navigation of the boat, as owners of her earnings and profits, they are both and each equally responsible to the plaintiff for the
24 acts of the officers of the boat, in causing the explosion; and it is immaterial, as regards such liability, whether or not the boat itself was the sole property of one of them, and controlled, and the officers and men employed by one of them. If the boat was navigated for their joint benefit and profit, the acts of one in employing the officers and men, and managing the boat, were the acts of both, so far as third persons were concerned."

Which charge his honor the judge then and there gave to the jury; and to such charge and each and every part thereof, the defendant Davidson, by his counsel, then and there excepted.

And the plaintiff, by his counsel, thereupon further requested his honor the judge, to charge the jury that: "If Rumsey owned the 'John Rumsey,' and Davidson owned the 'Chippewa Falls' and other boats, and it was agreed between them that each should employ the men and manage his own boats, and at the end of the season the profits of the boats were to be divided between them, that made them partners in running the boats, and each responsible for the carelessness and negligence of the officers and men of each boat."

Which charge his honor the judge then and there gave to the
25 jury; and to such charge and every part thereof, the defendant Davidson, by his counsel, then and there excepted.

And the plaintiff, by his counsel, thereupon further requested his honor the judge to charge the jury that: "If Davidson was equally interested with Rumsey, in the earnings and profits of the 'John Rumsey,' that made them partners in running the boat, and equally responsible for the carelessness and negligence of the officers and men on the boat, and it is immaterial which of them employed the men and managed the business of the boat."

Which charge his honor the judge then and there gave to the jury; and to such charge and each and every part thereof, the defendant Davidson, by his counsel, then and there excepted.

And the plaintiff, by his counsel, therefore further requested his honor the judge to charge the jury that: "If the boiler of the John Rumsey exploded and injured the plaintiff, without any fault on his part, and the defendants, Davidson and Rumsey, were interested at the time in the navigation of the boat, as joint owners of her earnings and profits, the fact of such explosion is of itself full and sufficient evidence that it was caused by the fault or negligence of the defendants or those in their employment, and entitled the plaintiff to recover, unless the de-
26 fendants showed that no negligence or fault was committed by them or by those in their employment."

Which charge his honor the judge then and there gave to the jury; and to said charge and each and every part thereof, the defendant Davidson, by his counsel, then and there excepted.

And the defendant Davidson, by his counsel, then and there requested his honor the judge to charge the jury that: "The master is not liable to one of his servants for injuries sustained by him through the negligence, carelessness, or misconduct of a fellow-servant engaged in the same general business, unless the injury results from the incompetency of such fellow-servant, and such fellow-servant was employed by such master."

Which charge his honor the judge then and there refused to give to the jury; to which ruling and refusal the defendant Davidson, by his counsel, then and there excepted.

And the defendant by his counsel, then and there requested his honor the judge to charge the jury that: "The mere fact of the defendant Davidson, having an interest in the earnings of the boat at the end of the season would not make him liable for any injuries sustained by reason of its explosion, if he had not such an interest in it so as to control or take part in the hire of servants or in discharging them, by whom the negligence, if any, occurred."

27 Which charge his honor the judge then and there refused to

give to the jury; to which ruling and refusal the defendant Davidson, by his counsel, then and there excepted.

And the defendant Davidson, by counsel, then and there requested his honor the judge to charge the jury that: "A mere prospective interest in the earnings of the steamboat John Rumsey, to attach and be ascertained at the end of the season or time during which such earnings accrued and were made, and without any ownership or estate in said boats, and without any control of or participation in the management thereof, does not make the defendant Davidson a co-partner with the owner of said steamboat in the business thereof, nor make him liable for the acts and omissions of the servants, officers, or employees of or on said boat."

Which charge his honor the judge then and there refused to give to the jury; to which ruling and refusal the defendant Davidson, by his counsel, then and there excepted.

And the defendant Davidson, by his counsel, requested his honor the judge to charge the jury that: "The provisions of section 13 of the act of Congress entitled, 'An act to provide for the better security of the lives of passsengers on board of vessels propelled in whole or in
28 part by steam,' approved July 7th, 1838, do not apply, as a rule of evidence, except in cases of suits brought by passengers."

Which charge his honor the judge then and there refused to give; to which ruling and refusal the defendant Davidson, by his counsel, then and there excepted.

And his honor the judge charged the jury that, under the provisions of said section 13 of said act of Congress, the fact of the explosion of the boiler of the John Rumsey was full prima facie evidence of negligence.

To which charge the defendant Davidson, by his counsel, then and there excepted.

The cause was thereupon submitted to the jury, who, afterward, on the 28th day of May, 1868, came into court, and rendered a verdict in favor of the plaintiff and against the defendant Davidson, for the sum of twenty-five hundred dollars, which verdict was entered in the minutes by the clerk.

And as none of the foregoing appears of record, the judge who tried said cause has hereunto set his hand, this 25th day of June, A. D. 1868.

W. WILKIN,
District Judge.

29 STATE OF MINNESOTA, *County of Ramsey, ss:*

District court, 2d judicial district.

ARTHUR CONNELLY, PLAINTIFF,
ag'st
W'M F. DAVIDSON, IMPLEADED WITH H. T. RUMSEY,
defendant.

Pursuant to the verdict of the jury duly rendered in this cause on the 28th day of May, A. D. 1868, whereby they find for the plaintiff: Now, on motion of Smith & Gilman, attorneys for plaintiff, it is hereby adjudged that the plaintiff herein recover of said defendant W'm F. Davidson, impleaded with H. T. Rumsey, the sum of two thousand five hundred dollars damages, the amount of verdict aforesaid, with sixteen $\frac{50}{100}$ dollars interest since rendition, and the further sum of twenty-seven

75/100 dollars costs and disbursements, in all amounting to the sum of $2,544 25.

Signed this 2d day of July, A. D. 1868.

ALBERT ARMSTRONG, *Clerk.*

Amount of verdict	$2,500 00	
" " interest since rendition	16 50	
		2,516 50
Costs and disbursements:		
Sheriff fees on summons	1 50	
" " " subpœna	1 00	
Dr. Stewart's witness fee	1 10	
Statute costs	10 00	
Clerk at Hastings	3 50	
" Ramsey County	10 65	
		27 75
		$2,544 25

30 STATE OF MINNESOTA, *County of Ramsey, ss:*

District court, second judicial district.

I, Albert Armstrong, clerk of said court, do hereby certify and return to the honorable the supreme court of said State that the foregoing are full and true copies of the compla'nt, answer, bill of exceptions, and judgment filed and entered in the within-entitled action as appears from the records and files in *in* my office.

Witness my hand and the seal of said court at St. Paul, this 14th day of July, A. D. 1868.

[L. S.] ALBERT ARMSTRONG, *Clerk.*

[5-cent U. S rev. stamp.]

(Endorsed as follows:) "The return to appeal. Filed July 15th, 1868. Sherwood Hough, clerk."

STATE OF MINNESOTA:

Supreme court. General July term, A. D. 1870.

TUESDAY MORNING, 10 O'CLOCK, *July 12th, A. D.* 1870.

Court convened pursuant to adjournment, all the justices being present.

31 ARTHUR CONNELLY, RESPONDENT,
vs.
WILLIAM F. DAVIDSON, IMPLEADED WITH HARVEY T. RUMSEY, appellant.

This cause was this day re-argued by counsel for the respective parties upon the return to the appeal herein, submitted to the court for decision, and taken under advisement.

A true record.

Attest.

SHERWOOD HOUGH, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest.

SHERWOOD HOUGH, *Clerk.*

(Endorsed as follows:) "Copy of minutes of argument. Filed January 7th, A. D. 1870. Sherwood Hough, clerk."

32 Supreme court. July term, A. D. 1870.

STATE OF MINNESOTA:

ARTHUR CONNELLY, RESPONDENT,
vs.
WILLIAM F. DAVIDSON, IMPLEADED WITH Harvey T. Rumsey, appellant.

Appeal from district court, 2d judicial district, county of Ramsey.

This cause having been duly argued and submitted at the general July term of this court, A. D. 1870, upon the return to the appeal herein: Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things affirmed, and that the respondent have judgment accordingly.

Entered January 7th, A. D. 1871.

By the court.

Attest.

SHERWOOD HOUGH, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled action.

SHERWOOD HOUGH, *Clerk.*

33 (Endorsed as follows:) Copy of order for judgment. Filed January 7th, A. D. 1871. Sherwood Hough, clerk.

Supreme court. July term, A. D. 1870.

STATE OF MINNESOTA:

ARTHUR CONNELLY, RESPONDENT,
vs.
WILLIAM F. DAVIDSON, IMPLEADED WITH Harvey T. Rumsey, appellant.

Pursuant to an order of court duly made and entered in this cause on the 7th day of January, A. D. 1871:

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondent above named, do have and recover of said William F. Davidson, appellant her in, the sum and amount of thirty-six dollars and forty cents

34 ($36 40) costs and disbursements in this cause in this court, and that said respondent do have execution for the enforcement hereof.

Dated and signed this 7th day of January, A. D. 1871.

By the court.

Attest.

SHERWOOD HOUGH, *Clerk.*

Statement for judgment.

Costs allowed by statute	$25 00
Printers' fees for printing brief	3 00
Clerk's fees supreme court	8 00
Filing mandate and docketing transcript	40
	$36 40

STATE OF MINNESOTA, *Supreme Court, ss:*

I, Sherwood Hough, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original, remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of our said supreme court, at the capitol, in the city of Saint Paul, this 7th day of January, A. D. 1871.

[L. S.] SHERWOOD HOUGH, *Clerk.*

35 (Endorsed as follows:) Transcript of judgment. Filed January 7th, A. D. 1871. Sherwood Hough, clerk.

The foregoing papers attached together and endorsed. Judgment-roll. Filed January 7th, A. D. 1871. Sherwood Hough, clerk.

STATE OF MINNESOTA, *Supreme Court, ss:*

I, Sherwood Hough, clerk of said court, do hereby certify that I have carefully compared the within and foregoing copy with the original record and judgment-roll in the within-entitled action, remaining on file and of record in my office, and that the same is a true and authentic transcript thereof.

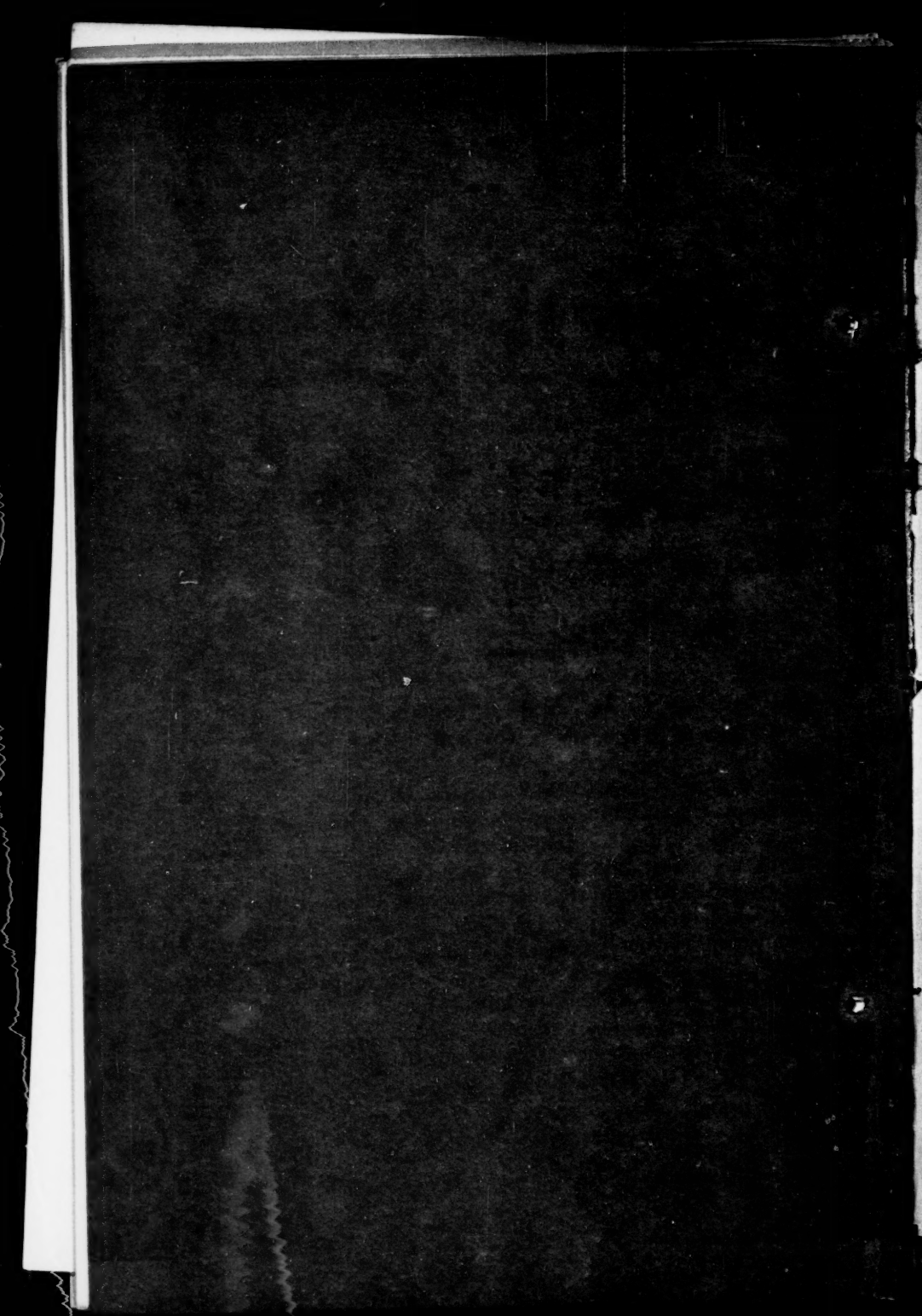
In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Minnesota, at the capitol, in the city of St. Paul, this 8th day of May, A. D. 1871.

[SEAL.] SHERWOOD HOUGH, *Clerk.*

[5-ct. int. rev. stamp, cancelled.]

(Indorsed:) Supreme Court of the United States. W'm F. Davidson, impleaded with H. T. Rumsey, pl'ff in error, vs. Arthur Connelly, def't in error. Return to writ of error. Allis, Gilfillan & Williams, att'ys for pl'ff in error.

(Indorsement on cover:) No. 510. William F. Davidson, plaintiff in error, vs. Arthur Connelly. Minnesota supreme court. Filed 9th December, 1871.



Supreme Court of the United States.

DECEMBER TERM, 1871.

WM. F. DAVIDSON, impleaded with H. T. RUMSEY,
Plaintiff in error,
vs.
ARTHUR CONNELLY,
Defendant in error.

MOTION OF DEFENDANT IN ERROR TO DISMISS THE CAUSE FOR WANT OF JURISDICTION.

The case comes to this Court on writ of error to the Supreme Court of the State of Minnesota. We now move, on behalf of the defendant in error, to dismiss the cause from this Court for want of jurisdiction.

It was an action to recover damages resulting to the defendant in error, from the explosion of a steamboat boiler, while the boat was owned and operated by the plaintiff in error, and occasioned by the carelessness and fault of the plaintiff in error and his servants.

It is only by virtue of section 25 of the Judiciary Act of 1789, that this Court can take jurisdiction of the case,

and the Court will not take jurisdiction, unless it appears *on the record itself*, to involve one of the cases mentioned in said section 25.

16 *Peters*, 281.
16 *Peters*, 525.
7 *How*, 738.

An inspection of the record in this case will show that no question arose, or was decided in the State Court, of the character necessary to give this Court jurisdiction over the case under said section 25, of the Judiciary Act. It was a simple, common law action to enforce a common law right.

At the December term of this Court, 1868, three cases were dismissed on our motion, for want of jurisdiction, in all of which the present plaintiff in error was then also plaintiff in error. One being against Thomas McMahon, one against Jacob L. Starcher, and one against John King, severally defendants in error; all precisely like the present case, and arising out of the same occurrence, and brought into this Court the same as the present has been. There is no distinction between those cases and the present one, and as they were at once dismissed by the Court on an inspection of the record, this case should be disposed of in the same way.

The decisions upon the question of jurisdiction conferred by section 25 of the Judiciary Act, are numerous, and are of course familiar to the Court.

Not only must it appear from the record (and the opinion of the Court is no part of the record: 13 Peters, 157, 16 Peters, 234), that one of the cases mentioned in said section 25, is involved; but there must be a decision of the State Court *against* the validity of the U. S. law in-

volved, or *against* the claim or right set up under it, nothing of which exists in the present case.

Fulton vs. McAffee, 16 *Peters*, 149.
Reddall vs. Bryan, 24 *How.* 420.
Gordan vs. Caldcleugh, 3 *Cranch*, 268.

The motion to dismiss is hereby respectfully submitted on our part.

SMITH & GILMAN,
Attorneys for defendant in error.

SUPREME COURT

OF THE

UNITED STATES.

DECEMBER TERM, 1871.

WM. F. DAVIDSON, Plaintiff in Error,

vs.

ARTHUR CONNELLY, Defendant in Error.

ERROR TO THE SUPREME COURT OF MINNESOTA.

Brief of the counsel for plaintiff in error, on motion of the counsel for defendant in error, to dismiss for want of jurisdiction.

STATEMENT OF THE CASE.

About the first of November, A. D. 1864, the boiler of the steamboat "John Rumsey" exploded when nearing the port of St. Paul, Minn. Connelly, the defendant in error, was a deck hand on board of the steamboat "Albany,"

which was proceeding up the river near the "John Rumsey," when the explosion occurred.

Connelly, while thus employed on board of the "Albany," was injured by some fragments striking him, thrown from the "John Rumsey" by the violence of the explosion.

He brought this action to recover from the alleged owners of the "John Rumsey," damages for the injuries he claimed to have thus sustained by reason of the explosion. *See complaint and bill of exceptions.*

It will be noticed that the defendant in error was neither a passenger nor employee on board of the steamboat on which the explosion occurred.

At the trial, the plaintiff in error requested the court to instruct the jury that the provisions of section 13, of the Act of Congress entitled, "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, "approved July 17, 1838, do not apply as a rule of evidence, except in cases of suits brought by passengers.

Which instruction the court refused and the plaintiff in error duly excepted. *See bill of exceptions near the end. (The record is not yet printed.)*

The court then instructed the jury that under the provisions of said section 13, of said Act of Congress, the fact of the explosion of the boiler of the "John Rumsey," was full *prima facie* evidence of negligence; to which instruction the plaintiff in error duly excepted.

These rulings the Supreme Court of the State affirmed.

POINTS.

I.

Both the title and terms of the act of Congress, referred to, cleary show that the provisions of this act apply only to passengers on board of the vessel on which the explosion occurs.

5 *Stat. at large*, 306, *Sec.* 13.

It could never have been the intention of the Legislature to adopt such a rule of evidence in behalf of persons on other vessels, or on the shore—strangers altogether to the vessel on which the accident might occur, and to the owners and officers of such vessel. The stringent rule of evidence here provided is, as the title of the act indicates, for the *better security of the lives* of those persons, who entrust themselves and their lives to the keeping of the officers and employees of such vessels. It could not have been intended to establish and apply to the owners of steam vessels *as against all the world* a different and more stringent rule of evidence in questions of tort, than that which governed the rest of the world in like questions.

It was against the carrier, who employed the dangerous motive power of steam, and in behalf of the persons and things so carried, that the national legislature thought it expedient to adopt this rule of evidence. The title and terms of the act clearly and definitely indicate the supposed mischief, which it was thought needed remedying, and leave nothing to construction.

The case at bar not being that of a passenger or any other person on board of the vessel on which the explosion occurred, the provisions of this act have no application

to it. The Court therefore erred in applying the provisions of section 13, of this act, to the case at bar.

The plaintiff in error, then claimed and still claims the right to be exempted from the provisions of this section in this case.

The defendant in error, then claimed and still claims the right under this clause to have the rule of evidence there by established, administered in his behalf in this case.

The special enactment of such a rule of evidence by Congress to apply to persons and property, carried on board of vessels propelled by steam, clearly *implies* that this rule of evidence does *not* apply to other cases.

The decision of the State Court was against the exemption, which the plaintiff in error claimed under this act.

Had the defendant in error asked the State Court to apply this rule to the case at bar and had that court refused so to do, no doubt the decision would have been against a right claimed by the defendant in error, under this clause of the act of Congress, and he could have removed the case to this Court.

But the rights of the parties under this act must be *mutual* and if one can claim a privilege under it the other may claim an exemption; if one party can claim under this act that the rule of evidence thereby established is applicable to the case, the other may claim under this act that such rule is not applicable, but that a very different rule does apply to this case.

II.

The application, or non-application of the provisions of section 13 to the case at bar, was very material and went directly to the merits of the issue before the Court.

It is respectfully submitted that this case comes both within the spirit and letter of the act of Congress, authorizing the removal of causes from the State tribunal to this Court.

LORENZO ALLIS,
of Counsel for Plaintiff in Error.